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ABSTRACT

This chronology and policy analysis of U.S. telecommunications-related decisions from 1980 to 1988 begins with a narrative detailing the year-by-year issues and actions of the Federal Communications Commission and the U.S. Congress related to telecommunications. An overview of telecommunications policy is then provided, which briefly reviews: (1) the role of telecommunications in the "information society"; (2) the philosophical position of the Reagan administration toward telecommunications policy; (3) privatization and Expendable Launch Vehicle (ELV) operations; (4) the amalgamation of communications media empires; (5) the removal of longstanding restrictions on program content and time allotted to broadcast commercial messages; (6) the aftermath of the AT&T breakup; (7) Supreme Court decisions and the Electronic Communications Privacy Act of 1986; (7) the reallocation of Instructional Television Fixed Service (ITFS) microwave frequencies to Multipoint Distribution Service (MDS); and (8) the impact of the prevalence of laissez faire attitudes toward telecommunications in the corporate sector. (CGD)

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An Overview of U.S. Telecommunications Policy, 1980-1988

prepared with assistance from

Cohn & Marks

Introduction

In 1981, a study commissioned by the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) noted that the U.S. private sector was "understandably confused" about where to go to seek objective comprehensive information and assistance regarding U.S. telecommunications[1] policy. International PTTs (Ministries of Post, Telephone and Telegraph) had similar difficulty, seeing several U.S. agencies divide authority for developing international telecommunications policy in a conflicting and often confusing manner. In 1983, NTIA issued a report that concluded that the dispersal of responsibility for formulating telecommunications policy prevents the United States from responding effectively to the changing telecommunications market, and also adversely affects the ability of U.S. firms to function effectively abroad.

In 1983, the late Malcolm Baldridge, then Commerce Secretary, testified before Congress that in 1980 the U.S. exported $25 billion in information-related technology and merchandise. In addition, telecommunications services were responsible for a substantial percentage of the 1980 total for all U.S. service exports estimated at $60 billion. By 1990, Baldridge projected, telecommunications equipment and services may very well be our most important export.

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1 Communications by electronic means

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We are rapidly realizing Secretary Baldridge's projection as new telecommunications technologies in the United States continue to influence the nature of the economy and culture, as well as educational and political processes. Due to the number and diverse orientation of U.S. policy-formulating agencies, it requires some effort to track telecommunications policy issues and decision-making. There is no single source, or comprehensive compendium of specific telecommunications policy decisions and up-to-date status of policy "in the works" available.

The Public Service Satellite Consortium's National Center for Telecommunications and Information Policy reached this conclusion after an extensive review of the literature and interviews with key staff in more than eight government agencies concerned with telecommunications. All of these agencies participate in the ongoing process of telecommunications policy development in the United States. Therefore, it is vital for telecommunications planners and businesses, whose decisions depend upon accurate and timely understanding to have access to up-to-the-minute information. To this end, the Center, with assistance from Cohn & Marks, has assembled the following chronology and policy analysis of telecommunications-related decisions over the past eight years.

Chronology of Telecommunications Decisions, 1980-1988

1980

May: The FCC curtails "clear channel" protection of AM broadcasters. By eliminating exclusive nighttime use and restrictions on shared use by AM broadcasters on clear channel frequencies, approximately 100 additional allocations become available.

July: FCC eliminates its restrictions on carriage of distant signals by cable systems. Syndicated exclusivity rules, which required cable systems to delete from distant signals programs subject to exclusivity agreements in their local market, are eliminated.

September: FCC gives preliminary approval for the addition of more than 140 UHF television stations.

December: The Commission releases its decision on reconsideration of the earlier (April, 1980) *Final Decision* in the Second Computer Inquiry docket. The two actions, taken together, significantly re-structure the nature of telephone company participation in non-voice telephone services. The action separates telephone company services into three categories: basic telephone service, enhanced telephone service and the supply of customer premises equipment associated with telephone communications. This last category was further divided into "embedded" gear in place at the time of the FCC action and equipment to be offered later. Enhanced services offerings and new CPE were completely removed from federal rate regulation and the state imposition of rate regulation also forbidden for these services. Basic service and embedded CPE remain subject to tariff regulation. AT&T was subject to one further regulatory constraint: that company was permitted to offer unregulated services and equipment only through a "separated" subsidiary company.

1981

January: FCC eliminates several program content regulations for radio stations, including the renewal application processing guidelines that had the effect of requiring limits on commercial time and a minimum of news and public affairs. Although specific percentage requirements were eliminated, amounts of time devoted to commercials or to news and public affairs programming remain relevant in renewal hearings.

April: FCC begins issuing cellular telephone licenses.

November: FCC prohibits telephone companies from owning cable television systems but states that it may consider waiver requests in rural areas lacking alternative sources of cable television service.

December: Congress passes Record Carrier Competition Act of 1981. The bill allowed International Record Carriers (IRCs), such as RCA Globcom and Western Union International, to expand domestic operations beyond the five gateway cities. Western Union, previously limited to domestic operation, was permitted to engage in international record carriage.

1982

June: FCC adopts final rules for DBS (Direct Broadcast Satellite).

July: FCC eliminates restrictions on television network/cable system cross ownership.

July: FCC authorizes domestic communications satellite owners to sell transponder capacity outright in addition to offering transponders on a common carrier basis. Future applicants for authorizations for construction and launch of communications satellites were required to state in their applications whether transponder capacity would be offered on a common carrier basis or would be sold outright to third parties.

August: FCC allows GTE Telenet and Tymnet to provide "packet switched" enhanced communications service between the U.S. and Western Europe. In this authorization, the FCC explicitly stated that the "basic/enhanced" service distinction developed in the Computer II order was applicable to international communications as well.

August: U.S. and Canada reach an agreement governing transborder satellite voice and data transmission.

August: U.S. District Court approves, with some modifications, a consent decree settling the U.S. v. AT&T antitrust litigation. AT&T was required to divest all its Bell Operating Companies (BOCs), but was permitted to keep its manufacturing subsidiary (Western Electric), its research division (Bell Labs), and its international and domestic long distance division (Long Lines). Under the terms of the agree-

ment, the BOCs were required to provide to all interexchange carriers equal access to local exchange subscribers. Additionally, AT&T was given permission to enter lines of business other than the provision of "common carrier communications services." Restrictions were imposed on BOC provision of enhanced services and BOC entry into non-telecommunications businesses.

August: FCC revises its "Authorized User" policy which had previously limited Communications Satellite Corp. (Comsat) to providing uplink and downlink service only to other common carriers.

1983

May: FCC revises FM allocation scheme so as to authorize almost 1000 new FM stations nationwide.

May: FCC reallocates microwave channels from the Instructional Fixed Television Service to the Multipoint Distribution Service. In the same proceeding, FCC authorizes applications for Multichannel MDS (MMDS). Existing ITFS licensees are permitted to lease "excess" transmission capacity.

July: FCC agrees to start granting developmental authorizations to meteor burst communications in the Rural Radio Service. Meteor burst systems use meteor trails to reflect radio signals.

September: First Low Power Television (LPTV) license lottery is held.

November: State and local governments are prohibited by the FCC from regulating certain aspects of Satellite Master Antenna Television Systems (SMATV). This was an extension of the FCC's earlier decision prohibiting state and local regulation of certain aspects of Multipoint Distribution Systems (MDS).

1984

January: United States Supreme Court rules that home videotaping of broadcast television programs, in certain circumstances, is not an infringement of copyright. Accordingly, it held that sale of videotape recorders to consumers was not a contributory infringement under the Copyright Act.

January: United States Court of Appeals for the District of Columbia Circuit upholds FCC's statutory authority to permit Comsat to deal with non-carriers and to provide end-to-end service, but nevertheless reverses the Commission's decision holding that the FCC abused its discretion in permitting non-carrier access without at the same time considering whether or not IRCs should be given direct access to Intelsat or to own their own earth stations.

January: Cable Communications Policy Act passed by Congress. The Act provides comprehensive regulatory system for cable television, restricting regulation by FCC, states and local authorities. Subscriber rates are deregulated in most cases. The Act also codifies restrictions upon telephone company entry into cable.

February: President Reagan signs an executive order directing the Transportation Department to coordinate a program that would facilitate, to the extent permitted by existing law, private corporations to develop Expendable Launch Vehicle (ELV) operations.

April: FCC announces that it will use a lottery system to award cellular telephone licenses.

May: FCC permits AT&T and U.S. IRCs to participate in the TAT-8 cable project, the first trans-Atlantic fiber optics telecommunications cable.

June: FCC eliminates renewal processing guidelines that had the effect of imposing upon television stations maximum commercial time and minimum new and public affairs programming limits. Amount of time spent for each category of programming would still be relevant in renewal hearings.

July: The Land Remote-Sensing Commercialization Act of 1984 is signed into law. The Act provides for a phased transfer of Landsat from federal to private ownership.

July: FCC modifies its "Rule of Seven" which forbade single or related entities from ownership of more than seven FM, seven AM and seven TV stations nationwide. The FCC increased the limit to 12 outlets in each service, provided that such ownership did not contravene certain audience reach regulations.

October: FCC announces criteria and procedures for the removal of embedded customer premises equipment (CPE) owned by independent (non-Bell) telephone companies and tariffed at the state level from regulated service.

October: Commercial Space Launch Act is passed. The Act permits the Secretary of Transportation to authorize private companies to launch orbital and sub-orbital vehicles.

1985

April: FCC authorizes two private applicants to construct trans-Atlantic cable on which bulk capacity would be sold or leased on a non-common carrier basis.

July: FCC, in one instance, grants Special Temporary Authority to a trustee to hold stock on behalf of a party making a tender offer opposed by current management. This procedure permits the trustee to hold the stock without first seeking "long form" approval but instead after obtaining "short form" approval. This action was taken without expressing any judgment as to how the Commission would ultimately conclude its pending rule-making to determine the appropriate procedures to be followed in hostile takeovers and proxy contests.

July: Court of Appeals for the District of Columbia Circuit holds that FCC's "must carry" rules, that require cable systems to carry specified broadcast signals, violate the First Amendment.

July: FCC authorizes three American companies to compete against Intelsat for certain segments of its business.

July: FCC issues its "Separate Systems" order which authorizes private companies to provide, subject to certain restrictions, transponder capacity for international communications services outside of the Intelsat system. Among the restrictions are that the service be provided on a non-common carrier basis and that the service not be interconnected to the public switched network.

November: FCC establishes a regulatory distinction between dominant and non-dominant international telecommunications carriers, to allow non-dominant carriers to operate under less stringent regulations.

1986

February: Comprehensive Smokeless Tobacco Health Education Act of 1986 is enacted. The Act provides that it is unlawful to advertise smokeless tobacco on any electronic media regulated by the FCC.

May: FCC adopts its Report and Order in the Third Computer Inquiry. When fully implemented, this action will eliminate the need for AT&T and the Bell companies to use "separated" subsidiary companies when they offer "enhanced" telecommunications services. The new regulatory scheme will rely on a requirement of "Open Network Architecture" through which competitors with the dominant carriers can purchase—through tariffed offerings—each of the component elements of any enhanced service offering.

August: FCC reinstates a more limited version of "must carry" rules which limited the situations in which cable systems were required to carry broadcast signals. In addition, the rules were to remain in effect for a limited period of time pending transition by cable subscribers to A/B input selector switches which cable systems were required to offer to subscribers.

October: United States Court of Appeals for the District of Columbia Circuit upholds FCC's Authorized User Decision as well as the FCC's decision to deny IRC's direct access to Intelsat.

October: Electronic Communications Privacy Act of 1986 enacted into law. The Act expands the federal prohibitions against interception of electronic communications to new technologies, such as cellular telephones.

December: FCC issues a ruling that a consortium of all mobile satellite service (MSS) applicants is to be given authority to operate as a single national service.

1987

February: FCC declines to regulate the terms and conditions under which satellite programming is delivered to home dish owners or to set uniform standards for encryption devices used by programmers.

April: FCC amends its main studio location rule to broaden the circumstances under which a broadcaster may locate its studio outside of its principal community of license.

June: President Reagan vetoes bill that would codify the Fairness Doctrine as part of the Communications Act of 1934.

August: FCC rules that Fairness Doctrine is unconstitutional and declines to apply it to pending case.

September: Federal District Court Judge Harold Greene disallows the BOCs from entering the interexchange (long distance) communications or equipment manufacturing businesses. Further, he rules that BOCs may not offer any but a limited number of "electronic information services" (EIS). The BOCs are permitted to provide more sophisticated transport functions for EIS offerers including "gateways" that will serve as a means through which a variety of EIS offerings may be made available to local loop subscribers and other functions such as message storing.

1988

January: Reagan administration lifts the ban on U.S. private satellites that have the ability to distinguish and photograph objects on the Earth's surface that are smaller than 10 meters across.

March: FCC determines that it has the authority to license international up-link earth stations to private concerns, other than Comsat and the IRCs, for use with the Intelnet and IBS offerings of Intelsat, provided that such concerns do not offer common carrier services and are not interconnected to the public switched network.

September: The FCC rules tentatively that broadcasters of high definition television (HDTV) may be limited to existing UHF and VHF bands and will not be allowed to use the DBS band.

November: Satellite Home Viewer Act of 1988 signed into law. The Act creates a six-year compulsory license for satellite common carriers to retransmit superstation and network signals for private viewing by owners of earth stations. Network signals are subject to the compulsory license only for transmissions to unserved households, i.e., households unable to receive the network signal in question.

An Overview of Telecommunications Policy, 1980-1988

In the past two decades, "telecommunications" has clearly emerged as a dominant issue, worthy of its own policy formulation. Rapid advancements in telecommunications technology and its merger with computerized information systems, along with the reapportionment of the economic pie has resulted in what is now termed "the information society," with telecommunications the vehicle for all of the information that is bought, sold and manipulated. With 60% of the workforce now engaged in information-related activities, telecommunications has become indispensable to our day-to-day life, both at home and at work.

The speed with which this transformation has taken place has resulted in telecommunications policy formulation as a reactive rather than a proactive process on the part of the U.S. government. Nevertheless, a look at the last eight years of Reagan Administration decisions reveals that many of the same policies that have had a tremendous impact on the way business is done in this country have carried over into the telecommunications arena. Encouragement of privatization and loosening of antitrust regulations have marked the Reagan years, along with a string of decisions much more favorable to businesses than the public sector or the consumer. This same philosophical position characterizes a number of the decisions on telecommunications.

Privatization came into vogue and 1984 saw the signing of an executive order by President Reagan directing the Department of Transportation to coordinate a program enabling private corporations to develop Expendable Launch Vehicle (ELV) operations. In July, the Land Remote Sensing Commercialization Act of 1984 became law, providing for a phased transfer of Landsat from federal to private ownership. The Commercial Space Launch Act was passed in October 1984, permitting the Secretary of Transportation to authorize private companies to launch orbital and sub-orbital vehicles. Finally, in 1985 the FCC issued its "Separate Systems" order authorizing private companies to provide transponder capacity for international communications services outside of the Intelsat system.

Despite the enormous impact of the AT&T antitrust case (which was started under the Carter administration), other actions encouraged the amalgamation of communications media empires, particularly in the broadcasting area (i.e., Murdoch, Turner, Fox). In 1982, the FCC eliminated restrictions on television network/cable system cross-ownership. And in July 1984 the FCC modified its "Rule of Seven," which had limited ownership of more than seven FM, seven AM and seven television stations nationwide by the same or related entity. Companies are now permitted to own 12 of each, provided that such ownership does not contravene certain audience reach regulations.

Several longstanding restrictions on program content and time allotted to commercial messages were removed during the last eight years. In January 1981, the FCC eliminated selected regulations for radio stations, including the renewal processing guidelines, which had previously had the effect of placing limits on the maximum amount of commercial time and the minimum news and public affairs time allowed. In 1984, similar rules for television were rescinded. Nineteen eighty-five saw the end of the "must carry" rules requiring cable systems to carry specified broadcast signals when the DC Circuit Court of Appeals found that they violated the First Amendment right to free speech. Similarly, a bill that would include in the Fairness Doctrine, which had required broadcasters to provide equal time for opposing viewpoints on political issues, in the Communications Act of 1934, was vetoed by President Reagan in June of 1987 and two months later the FCC determined the Fairness Doctrine to be unconstitutional.

Local control over the media diminished as cable companies became more independent of state and local governments. (July 1980, November 1983, July 1985, April 1987).

At the same time, resources were expanded and competition encouraged when the FCC opened up hundreds of new AM and FM radio and UHF television station licenses. Lotteries were held for cellular radio and low power television licenses, and the settlement of the AT&T antitrust lawsuit led to the creation of seven regional Bell operating companies, as well as numerous alternative long distance carriers and other "enhanced services" providers.

Negative reaction to the AT&T breakup has now diminished somewhat. New services like ISDN (Integrated Services Digital Network) are becoming available and long distance costs are down. Consumers have figured out the new cast of characters and, at the end of 1988, the AT&T stockholders are relatively happy.

On the positive side for the consumer, the Supreme Court handed down a decision permitting the marketing of videocassette recorders, enabling expanded use of available technologies. Backyard dish owners continue to be able to pick up unencrypted signals, and the passage of the Electronic Communications Privacy Act of 1986 extended the prohibitions against interception of electronic communications, such as cellular phones.

One of the hottest debates, from the public service point of view, was over the reallocation of Instructional Television Fixed Service (ITFS) microwave frequencies to Multipoint Distribution Service (MDS). The FCC felt that ITFS channels were underused, and probably with good reason. At that point, in 1983, there was a shortage

of quality, relevant educational programming for instructional television. However, with the proliferation of educational networks and federal assistance from programs like "Star Schools," instructional television users are beginning to have more choices and ITFS programming services will expand. It may be too early to tell what the ultimate outcome of the reallocation strategy will be. At the same time, revenue generated from leasing excess ITFS transmission capacity makes a compelling argument for ITFS license holders to cooperate with MDS services.

In general, the telecommunications-related decisions over the last eight years have not reflected a consistent policy position specifically directed toward any one sector. It's true that today there is more widespread use of advanced telecommunications technology by businesses, government, hospitals, schools and libraries -- more services are available and affordable. However, these developments are primarily attributable to a combination of market forces and a *laissez faire* philosophy, rather than systematic efforts to establish groundrules for efficient, effective use of telecommunications by the public and private sectors.

The prevalence of *laissez faire* attitudes in the corporate sector has had one unintended result as far as telecommunications is concerned. By concentrating on short-term profits rather than long-term market development, telecommunications R&D efforts have languished in this country. The end result is a telecommunications trade deficit of more than $2.5 billion per year, and growing. The U.S. is rapidly losing its leadership in this field, as in so many others. Balancing short-term marketplace competition with long-term industrial competitiveness is a problem that needs to be addressed not just by the courts and regulatory bodies but by the administration and Congress.